IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 76

SIDNEY ARCENEAUX,

Petitioner,

vs.

LOUISIANA.

BRIEF ON PETITION FOR WRIT OF CERTIORARI TO THE LOUISIANA SUPREME COURT

BRIEF FOR PETITIONER

J. MINOS SIMON
1408 Pinhook Road
Lafayette, Louisiana
Counsel for Petitioner.

INDEX

SUBJECT INDEX

Page

BRIEF FOR PETITIONER

Opinions Below 1

Jurisdiction 2

Constitutional Provisions and Statutes Involved 2

Questions Presented 4

Statement of the Case 4

Summary of Argument 8

Argument 9

Conclusion 26

Appendix 27

AUTHORITIES CITED

CASES:

Aero Transit Co. v. *Commissioners* (1947), 332 U.S. 495, 68 S.Ct. 167, 92 L.Ed. 99 17

Albertson v. *Millard* (1953), 345 U.S. 242, 73 S.Ct. 600, 97 L.Ed. 983 17

Beail v. *District of Columbia* (1952), 201 F. 2d 177 12

Bolling v. *Sharpe* (1954), 347 U.S. 497, 74 S.Ct. 693, 98 L.Ed. 884 22

Champlin Refining Co. v. *Commission* (1932), 286 U.S. 210, 52 S.Ct. 559, 76 L.Ed. 1062 14

Connally v. *General Construction Co.* (1926), 269 U.S. 385, 46 S.Ct. 126, 70 L.Ed. 322 ..... 13, 14, 15

Cramp v. *Board of Public Instruction of Orange County* (1961), 368 U.S. 278, 83 S.Ct. 279, 7 L.Ed. 290 ..... 14, 15

Hartford Steam Boiler Inspection and Insurance Co. v. *Harrison* (1937), 301 U.S. 459, 57 S.Ct. 838, 81 L.Ed. 1223 22

Page

Hebert v. *Louisiana* (1926), 272 U.S. 312, 47 S.Ct. 103, 71 L.Ed. 270 17
Henry v. *United States* (1959), 361 U.S. 98, 80 S.Ct. 168 20
Hernandez v. *State of Texas* (1954), 347 U.S. 475, 74 S.Ct. 667, 98 L.Ed. 866 23
Herndon v. *Lowry* (1937), 301 U.S. 242, 57 S.Ct. 732, 81 L.Ed. 1066 14
International Harvester Co. v. *Kentucky* (1914), 234 U.S. 216, 345 S.Ct. 853, 58 L.Ed. 1284 14
Kingsley Pictures Corp. v. *Regent* (1959), 360 U.S. 684, 79 S.Ct. 1362, 3 L.Ed. 1512 17
Lanzetta v. *New Jersey* (1939), 306 U.S. 451, 59 S.Ct. 618, 83 L.Ed. 888 13
Louisville Gas and Electric Co. v. *Coleman* (1928), 277 U.S. 32, 48 S.Ct. 423, 72 L.Ed. 770 .. 22
Lovell v. *Griffin* (1938), 303 U.S. 444, 58 S.Ct. 666, 82 L.Ed. 949 14
McNabb v. *United States*, 318 U.S. 332, 63 S.Ct. 608, 87 L.Ed. 819 25
Morey v. *Doud* (1957), 354 U.S. 457, 77 S.Ct. 1344 22
Skiriotes v. *Florida* (1941), 313 U.S. 69, 61 S.Ct. 924, 85 L.Ed. 1193 17
State v. *Antoine* (1938), 189 La. 619, 180 So. 465 19
State v. *Bentley* (1951), 219 La. 893, 54 So. 2d 137 19
State v. *Clement* (1946), 194 La. 395, 193 So. 685 11
State v. *McCormack* (1917), 142 La. 580, 77 So. 288 16
State v. *Richardson* (1932), 175 La. 823, 144 So. 587 19
State v. *Rock* (1926), 162 La. 299, 110 So. 482 18
State v. *Sanford* (1943), 203 La. 961, 14 So. 2d 778 11
State v. *Sinigal* (1915), 138 La. 469, 70 So. 478 19
State v. *Solomon* (1952), 222 La. 269, 62 So. 2d 481 ..... 20, 21
State v. *Stahl* (1959), 236 La. 362, 107 So. 2d 670 19
State v. *Westmoreland* (1913), 133 La. 1015, 63 So. 502 9

Page

State v. *Williams* (1931), 173 La. 1, 136 So. 68 11
Stromberg v. *California* (1931), 283 U.S. 359, 51 S.Ct. 532, 75 L.Ed. 1117 14
Thornhill v. *Alabama* (1940), 310 U.S. 88, 60 S.Ct. 736, 84 L.Ed. 1093 14
United States v. *Burnison* (1950), 339 U.S. 87, 70 S.Ct. 503 17
United States v. *Cardiff* (1952), 344 U.S. 174, 73 S.Ct. 189, 97 L.Ed. 200 14
Upshaw v. *United States*, 335 U.S. 410, 69 S.Ct. 170, 93 L.Ed. 10 25
Winters v. *New York* (1948), 333 U.S. 507, 68 S.Ct. 665, 92 L.Ed. 840 ..... 14, 15, 17
Wolf v. *Colorado* (1949), 338 U.S. 25, 69 S.Ct. 1359 20

CONSTITUTIONS AND STATUTES:

United States Constitution, Fifth Amendment .. 9, 18
United States Constitution, Fourteenth Amendment 2, 4, 8, 15, 17
Louisiana Constitution
Article 1, Section 11 19
Article 7, Section 10 ..... 2, 8
Article 7, Section 42 2
Article 7, Section 83 2
28 U.S.C. § 1257(3) 2
L.S.A.-R.S. 14:7 ..... 11, 17
L.S.A.-R.S. 14:107 ..... 2, 9, 17, 26
L.S.A.-R.S. 15:60 ..... 3, 23
L.S.A.-R.S. 15:80 ..... 3, 6
L.S.A.-R.S. 15:113 ..... 3, 8
L.S.A.-R.S. 15:114 8
L.S.A.-R.S. 15:127 ..... 3, 7
L.S.A.-R.S. 15:154 ..... 3, 6, 25
L.S.A.-R.S. 15:155 6
L.S.A.-R.S. 15:321 ..... 3, 7
L.S.A.-R.S. 15:323 ..... 3, 7
L.S.A.-R.S. 15:387 18

Page

MISCELLANEOUS:

91 C.J.S. 778, Vagrancy, Section 1 ..... 16, 20
37 N.Y.U. L.Rev. No. 1, pp. 102-136, "The Vagrancy Concept Reconsidered: Problems and Abuses in Statute Criminology" 20

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 76

SIDNEY ARCENEAUX,

Petitioner,

vs.

LOUISIANA.

BRIEF ON PETITION FOR WRIT OF CERTIORARI TO THE LOUISIANA SUPREME COURT

BRIEF FOR PETITIONER

Opinions Below

The Louisiana Supreme Court ruling complained of by petitioner consists of a denial of petitioner's application for writs of habeas corpus and for writs of certiorari, mandamus and prohibition rendered on March 16, 1962, entitled *State of Louisiana* v. *Sidney Arceneaux,* bearing Louisiana Supreme Court docket number 46,064, and reading in its entirety: "Writ refused. There is no error of law in the ruling complained of.", appearing at page 1 of the transcript of record. This application was made in respect to the ruling of the Fifteenth Judicial District Court, Parish of Lafayette, Louisiana, dated March 8, 1962, whereby said court summarily denied, without hearing, petitioner's application for a preliminary examination and alternatively for writ of habeas corpus, which ruling appears at pages 31-33 of the transcript of record.

Statement of Jurisdictional Grounds

The matter before the Court involves a final judgment or decree of the Highest Court of Louisiana, i.e., Louisiana Supreme Court, rendered on March 16, 1962, refusing to petitioner writs of habeas corpus, certiorari, mandamus and prohibition, in which application the validity of Louisiana Revised Statutes, Title 14, Section 107, was drawn in question as being repugnant to the Fourteenth Amendment to the United States Constitution. This application was denied and thus the validity of the State statute was upheld by the Louisiana Supreme Court.

The jurisdiction of this Court was invoked under the provisions of United States Code, Title 28, Section 1257 (3) and petitioner's application for writ of certiorari was granted on February 18, 1963.

Constitutional Provisions and Statutes Involved

The Fourteenth Amendment to the Constitution of the United States;

Louisiana Constitution, Article 7, Section 10;

Louisiana Constitution, Article 7, Section 42;

Louisiana Constitution, Article 7, Section 83;

Louisiana Revised Statutes, Title 14, Section 107;

Louisiana Revised Statutes, Title 15, Section 49;

Louisiana Revised Statutes, Title 15, Section 50;

Louisiana Revised Statutes, Title 15, Section 52;

Louisiana Revised Statutes, Title 15, Section 53;

Louisiana Revised Statutes, Title 15, Section 54;

Louisiana Revised Statutes, Title 15, Section 59;

Louisiana Revised Statutes, Title 15, Section 60;

Louisiana Revised Statutes, Title 15, Section 62;

Louisiana Revised Statutes, Title 15, Section 70;

Louisiana Revised Statutes, Title 15, Section 77;

Louisiana Revised Statutes, Title 15, Section 78;

Louisiana Revised Statutes, Title 15, Section 79;

Louisiana Revised Statutes, Title 15, Section 80;

Louisiana Revised Statutes, Title 15, Section 81;

Louisiana Revised Statutes, Title 15, Section 91;

Louisiana Revised Statutes, Title 15, Section 92;

Louisiana Revised Statutes, Title 15, Section 113;

Louisiana Revised Statutes, Title 15, Section 121;

Louisiana Revised Statutes, Title 15, Section 123;

Louisiana Revised Statutes, Title 15, Section 127;

Louisiana Revised Statutes, Title 15, Section 128;

Louisiana Revised Statutes, Title 15, Section 130;

Louisiana Revised Statutes, Title 15, Section 131;

Louisiana Revised Statutes, Title 15, Section 132;

Louisiana Revised Statutes, Title 15, Section 134;

Louisiana Revised Statutes, Title 15, Section 135;

Louisiana Revised Statutes, Title 15, Section 137;

Louisiana Revised Statutes, Title 15, Section 154;

Louisiana Revised Statutes, Title 15, Section 340;

Louisiana Revised Statutes, Title 15, Section 321;

Louisiana Revised Statutes, Title 15, Section 323;

Louisiana Revised Statutes, Title 15, Section 341.

Questions Presented

1. Does a State statute which renders persons guilty of vagrancy "who are found in or near any structure, movable, vessel, or private grounds, without being able to account for their presence therein" meet the safe-guarding standards of the due process and equal protection clause of the Fourteenth Amendment to the Constitution of the United States?

2. Does an illegal arrest and imprisonment carried out and maintained by State officials in violation of a prisoner's constitutional and statutory rights and the subsequent denial to the prisoner by State judicial officials of a State statutory right to preliminary examination and habeas corpus in respect thereto affect the right of the State to prosecute?

Statement of the Material Facts

On the evening of January 25, 1962, as darkness settled about his one-room shack, petitioner was arrested by four Deputy Sheriffs of Lafayette Parish, Louisiana.[1] These officers had no warrant for his arrest. They advised him, however, that they were arresting him in consequence of the oral request of the owner (one Meus Lagneaux) of the premises where petitioner lived, who, they informed petitioner, had told them petitioner was trespassing.

The occasion for petitioner's presence on these premises antedated his arrest. In April, 1961 he had been hired by

[1] These uncontradicted facts are found in petitioner's application for writs to the Louisiana Supreme Court, transcript of record pp. 4-16, and Exhibit A attached to his application consisting of petitioner's affidavit found at pp. 17-20 of the transcript of the record.

Meus Lagneaux as a farm laborer. He was to receive wages of $4.00 a day and furnished with food and lodging. The lodging furnished by his employer consisted of a one-room structure approximately 8 x 10 feet in size, which contained in the aggregate one bed, one electric light, and a wash-basin.

His wages were paid for the first month, but thereafter discontinued for reasons best known to his employer. Because of his impecunious condition and utter illiteracy, while timorously but vainly periodically requesting payment of his wages, petitioner continued working for his employer in virtual peonage. Then, on January 16, 1962, a dispute arose between petitioner and his employer, during which petitioner again requested payment of his wages. His employer not only refused to make payment, but ordered petitioner to leave his premises. Petitioner expressed his intention to abide by his employer's wishes and then requested permission to leave his meager personal belongings in his room, while petitioner went to New Orleans, where his sister lived, in search of work. His employer consented.

Impaired by his lack of skill and utter illiteracy, petitioner was unable to secure employment in New Orleans and, on January 25, 1962, returned to Lafayette Parish. On his return, however, he obtained employment on another farm situated in the neighborhood of his former employer. He was instructed by his new employer to appear the following day to start work. By then the day was drawing to a close. He visited a friend in an effort to borrow two or three dollars so as to enable him to buy something to eat, but was unsuccessful. At approximately 5:30 o'clock of that evening he appeared at his aforesaid room to gather his personal belongings. Upon entering, he turned on the one light in the room. Within a few minutes after he had entered his room, the four arresting officers (one of whom

—Murphy Lagneaux—was his former employer's son) rapped on the door of his room and his arrest followed.

Petitioner was taken to the Parish Court House and there locked behind bars. The following morning the Assistant District Attorney gave written authorization to a Deputy Sheriff to file a charge of vagrancy against him. These State officials then went through the hollow formality of causing a warrant for petitioner's arrest to issue. Thereafter they took no further action in respect to petitioner's incarceration, though required to do so by the mandatory laws of Louisiana,[2] and in fact petitioner was kept incommunicado until February 26, 1962.

On February 27, 1962 petitioner's counsel presented to the State District Court an application for preliminary examination,[3] and, alternatively, for a writ of habeas corpus. The District Judge signed the order granting preliminary examination and habeas corpus hearing, both to be heard on March 8, 1962.

After the District Judge called up these proceedings for hearing, the Sheriff while in open court extracted from his pocket the aforesaid "warrant", whereupon the Court summarily denied habeas corpus, though said Sheriff had never made response to petitioner's petition as required by Louisi-

---

[2] L.S.A.-R.S. 15:80 provides: "When any person shall have been arrested without a warrant, the peace officer, after he shall have caused him to be booked, shall bring him, without unnecessary delay, if the charge be such as to entitle the accused to a preliminary examination, before the Judge having authority to sit as a committing magistrate in the case, otherwise, before the Judge having trial jurisdiction thereof."

[3] Under the provisions of L.S.A.-R.S. 15:154 before a bill of information is filed or a bill of indictment found, an accused as a matter of right is entitled to a preliminary examination that will determine the existence of probable cause for his arrest and incarceration, under which procedure the State has the burden of producing proof showing such a probable cause. All evidence adduced at such a hearing must be reduced to writing and must be under oath. L.S.A.-R.S. 15:155.

ana law.[4] The District Attorney then moved orally for a continuance of the preliminary examination, alleging that he had not been served, and although Louisiana law does not require that he be served, but does require that all motions for continuance be in writing,[5] the Court continued preliminary examination until the following day.

When petitioner was called for preliminary examination on March 9, 1962, the District Attorney filed a document entitled "Answer",[6] wherein he alleged that he had, on that same day, filed a bill of information charging petitioner with the offense of vagrancy. Although the order of February 27 had granted the preliminary examination at a time when the Court had no discretionary power in respect thereto,[7] and the "Answer" did not ask that such order be recalled or revoked, but prayed instead that the preliminary examination be denied, the Court thereupon recalled and revoked its previous order and refused to permit petitioner a preliminary examination. Petitioner was

---

[4] L.S.A.-R.S. 15:127 provides: "The person on whom a writ of habeas corpus shall have been served, whether it be directed to him or not, shall at the time and place designated in the writ, produce the relator and make a written return to said writ."

[5] L.S.A.-R.S. 15:321 provides: "Every application for a continuance shall be by written motion alleging specifically the grounds upon which it is based. The allegations of the motion when made on behalf of the accused, must be sworn to by him or his counsel."

15:323: "Every motion for a continuance shall be tried summarily and contradictorily with the opposite party, and unless the evidence shows to the satisfaction of the Court that mover is entitled to a continuance, the Court shall order the trial to be proceeded forthwith."

[6] See transcript of record, p. 30, in which the District Attorney significantly does not deny the affirmative allegations of petitioner's application that his incarceration was without support in law or fact but merely recites that the District Attorney had filed a bill of information against petitioner on March 9, 1962, bearing date for petitioner's application for preliminary examination and habeas corpus.

[7] See footnote 3 and statute referred to therein.

then remanded to jail, where he had been continuously from the date of his arrest and remained, because he was too poor to post an appearance bond.

Invoking the jurisdiction of the Louisiana Supreme Court, imposed upon it by Article 7, Section 10 of the Louisiana Constitution, and by L.S.A.-R.S. 15:113 and 15:114, petitioner's counsel filed his application for writs of certiorari, mandamus and prohibition and for a writ of habeas corpus, complaining generally of a denial of petitioner's civil rights and challenging the constitutionality of the vagrancy statute on which the State officials relied for petitioner's incarceration.[5] Following the denial of this application, petitioner applied for writ of certiorari to this Court, which application was granted on February 18, 1963.

Summary of Argument

It is petitioner's contention that the vagrancy statute of Louisiana is unconstitutional in two major respects:

1. It is so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application and therefore it does not inform what is commanded or prohibited by the State under its terms, in consequence of which it denies to petitioner due process contemplated by the Fourteenth Amendment.

2. It denies to petitioner and those similarly situated the equal protection of State laws and thus further violates the guaranties of the Fourteenth Amendment in that

a. It creates an unreasonable classification and singles out those falling within the classification for

---

[5] See transcript of record, pp. 7-22.

different treatment, in respect to which there is no reasonable basis to support the contention that those falling within the classification are potential criminals or that their mode of life breeds criminal conduct.

b. It seeks to proscribe and punish a condition or status as opposed to a defined conduct, as a result of which petitioner and those similariy situated do not stand on an equal footing with other citizens of Louisiana.

c. It further denies to petitioner legal rights, e.g., the presumption of innocence, and the privileges of the Fifth Amendment.

3. The denial by State officials of the multiple legal rights secured to petitioner by the laws of Louisiana renders his arrest and incarceration void ab initio as being contrary to constitutional due process and equal protection.

ARGUMENT

(a) Statute is void for vagueness.

Vagrancy has been a State offense in Louisiana since 1855. *State* v. *Westmoreland* (1913), 133 La. 1015, 63 So. 502. The crime of vagrancy as materially relates to the case at bar is defined by Louisiana Revised Statutes, Title 14, Section 107, as amended by Act 454, Section 1 of 1952, in these words:

"The following persons are and shall be guilty of vagrancy:

* * * * *

(8) Persons who are found in or near any structure, movable, vessels or private grounds, without being able to account for their lawful presence therein;

> Whoever commits the crime of vagrancy shall be fined not more than $200 or imprisoned for not more than nine months, or both."

The criminal charge filed against petitioner was based upon this statute. It is petitioner's contention that the statute is void for vagueness.

The ambiguity and consequent broad reach of this crime is patent. In the first instance, it obviously invests police officers with authority not otherwise enjoyed by them. In such cases they are empowered to act as arresting officer, judge and jury in determining whether or not the person accused has given an acceptable accounting of his presence. It is a gimmick by which police officers are empowered to circumvent the sanctions of lawful arrest, in that under such a statute, arrest may occur or not as the whim of the arresting officer may dictate. Such an anomalous circumstance exists simply because the statute provides for no safeguards or criteria by which the meaning of the statute may be determined.

The phrase "without being able to account for their lawful presence" is subject to a variety of interpretations by men of common intelligence. There is no indication from a reading of this statute that this phrase relates to the physical or mental ability of a person to account for his lawful presence. Obviously a person suffering from shock or being seized by sudden and disabling physical ailment while walking along public walkways near a building would be a person unable to account for his lawful presence within the meaning of the statute and thus could be imprisoned for conduct over which he had no control. Similarly, a mental incompetent or a deaf and mute person would be unable to account for his lawful presence under such circumstances.

The meanings of the word "account" indicated in dictionaries are numerous and varied. And unlike most states a common law meaning of crimes cannot in this case be called in aid of a determination of the meaning of the words used in this statute, inasmuch as in Louisiana no act or conduct, however reprehensible, is a crime unless it is defined and made a crime clearly and unmistakably by statute. *State* v. *Sanford* (1943), 203 La. 961, 14 So. 2d 778; *State* v. *Williams* (1931), 173 La. 1, 136 So. 68; *State* v. *Clement* (1946), 194 La. 395, 193 So. 685; L.S.A.-R.S. 14:7. But even should it be conceded that the consensus concerning the meaning of the word "account" is to the effect that it is a statement or explanation of one's activities, that meaning itself is ambiguous. What explanation is contemplated by the statute? Does this statute speak of philosophy, law, sociology or custom? An explanation philosophically sound may offend prevailing custom or vice-versa. Similarly, an accounting meeting the highest standards expounded by modern sociologists may be legally impermissible.

Explanations of human activities are as various and diversified as are human beings. A hunter may be found near private grounds in search of his hounds, a beggar in pursuit of something to eat, an artist because he seeks to capture the scenery on canvas. Would the giving by these persons of such an explanation for their presence constitute a proper accounting if they were there at 6 a.m.? 1 p.m.? 8 p.m.? 11 p.m.? 2 a.m.? 4 a.m.? Would a prospective purchaser found near a structure or private grounds be deemed a vagrant under this statute if he explained his presence as being for the purpose of purchasing either the structure or private grounds to build a multi-million dollar factory that would create jobs for three hundred families? Or to purchase it for the purpose of operating a house of assignation? Or to purchase it for

the purpose of gaining entrance to an adjoining bank in order to burglarize it? Would a person found in or near any structure, movable vessels, or private grounds be a vagrant if he were to explain his presence by stating that he was enjoying his liberty as an American citizen? *Beail* v. *District of Columbia* (1952), 201 F. 2d 177.

Obviously the answers to these questions are multitudinous in count and equally variant in nature. There are no standards by which definitive meanings may be imparted to the words used nor are there limits established beyond which their meanings may not travel. Consequently, the practical implementation of this penal statute of necessity is effected accordingly as the propensities for good or evil of those charged with its enforcement may induce them to action. As a result, the moral strictures of a benevolent tyrant or the depravity of an evil doer equally may be accommodated and the liberty of the individual immolated on the fiat of arbitrary police action.

The accounting required by the statute is further complicated by the fact that it must be related to a person's "lawful" presence. Thus, in accounting for his presence, a person is required to be able accurately to interpret all existing laws in relationship to his presence, in order to exculpate himself from the catchall net of this vagrancy statute. Even then there is the risk that his interpretation of the law, though correct, may not conform to that of the court which tries him for vagrancy.

Thus it is that under the statute in question a person is required at peril of his liberty to speculate as to the meaning of this penal statute. This statute does not inform what the State commands or forbids. The status or act sought to be denounced is couched in terms so vague that men of common intelligence must necessarily guess at its meaning or differ as to its application. And for that reason it

operates to deny liberty without due process and is unconstitutional.

The applicable rule is stated in *Connally* v. *General Construction Co.* (1926), 269 U.S. 385, 391, 46 S. Ct. 126, 70 L. Ed. 322:

> "That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties, is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law. *And a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law.*"

The import of the statute under consideration is legally indistinguishable from the statute considered by the Court in *Lanzetta* v. *New Jersey* (1939), 306 U.S. 451, 59 S. Ct. 618, 83 L. Ed. 888. In *Lanzetta* the Court had for consideration the challenge that a New Jersey statute was void for vagueness. In so many words the statute made it a crime to be a gangster, which status was defined to be a person not engaged in any lawful occupation, known to be a member of any gang consisting of two or more persons who had been convicted of an offense. The Court exhibited no difficulty in arriving at the conclusion that such a statutory provision was ambiguous and therefore unconstitutional. The language of this statute was tested by the rule of *Connally* and was found grossly wanting. The statute was unmasked by the Court in these words (page 458):

> "The challenged provision condemns no act or omission; the terms it employs to indicate what it purports

> to denounce are so vague, indefinite, and uncertain that it must be condemned as repugnant to the due process clause of the Fourteenth Amendment."

Pointedly, the Court further observed:

> "No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids."

The validity of the provision of any statute must be tested on the basis of the terms employed. *Connally* v. *General Construction Co.*, supra. It is the statute, not the accusation, that may be brought under it which prescribes the rule to govern conduct and warns against transgression. *Stromberg* v. *California* (1931), 283 U.S. 359, 368; S. Ct. 532, 75 L. Ed. 1117; *Lovell* v. *Griffin* (1938), 303 U.S. 444, 58 S. Ct. 666, 82 L. Ed. 949. And these statutes must be couched in such terms and language as to make the offense sought to be denounced sufficiently explicit so that men of common intelligence will understand what is prohibited or commanded. *Champlin Refining* v. *Commission* (1932), 286 U.S. 210, 52 S. Ct. 559, 76 L. Ed. 1062; *Stromberg* v. *California*, supra; *Herndon* v. *Lowry* (1937), 301 U.S. 242, 57 S. Ct. 732, 81 L. Ed. 1066; *Thornhill* v. *Alabama* (1940), 310 U.S. 88, 60 S. Ct. 736, 84 L. Ed. 1093; *Winters* v. *New York* (1948), 333 U.S. 507, 68 S. Ct. 665, 92 L. Ed. 840; *International Harvester Co.* v. *Kentucky* (1914), 234 U.S. 216, 34 S. Ct. 853, 58 L. Ed. 1284, inasmuch as "words which are vague and fluid may be as much of a trap for the innocent as the ancient laws of Caligula". *U.S.* v. *Cardiff* (1952), 344 U.S. 174, 176, 73 S. Ct. 189, 97 L. Ed. 200.

In *Cramp* v. *Board of Public Instructions of Orange County* (1961), 368 U.S. 278, 83 S. Ct. 279, 7 L. Ed. 290, the Court had for consideration the constitutionality of a Florida statute which required the complaining party to

execute a written oath in which he was required to swear among other things that he had never lent his "aid, support, advice, counsel or influence to the Communist Party". In noting vagueness, the Court observed that the provisions of the statute were completely lacking in terms susceptible of objective measurement, and were too broad in scope to convey the meaning to a person of common intelligence of what was intended by the statute. Concluding against its constitutionality, the Court said (page 387):

> "We think this case demonstrably falls within the compass of those decisions of the Court which hold that 'a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential due process of law'. *Connally* v. *General Construction Co.*, supra • • • •"

The Louisiana vagrancy statute does not stand up to the test of the *Connally* rule and petitioner therefore respectfully submits that it should be declared unconstitutional because it violates the due process clause of the Fourteenth Amendment.

(b) Denial of Equal Protection.

The vagrancy statute under consideration condemns not a criminal act or criminal conduct but seeks to proscribe and punish a declared status only, in consequence of which it is not reasonably related to any legislative purpose impervious to constitutional attack. A person is not amenable to prosecution under this statute for what he does but rather for the condition or status of his existence. It is the type legislation which falls within the category so lucidly described by Justice Frankfurter in his dissent in *Winters* in these words:

"The case involved a New Jersey statute of the type that seeks to control 'vagrancy'. *These statutes are in a class by themselves,* in view of the familiar abuses to which they are put . . . Definiteness is designedly avoided so as to allow the net to be cast at large, to enable men to be caught who are vaguely undesirable in the eyes of the police and prosecution although not chargeable with any particular offense. In short, these 'vagrancy statutes' and laws against 'gangs' are not fenced in by the text of the statute or by the subject matter so as to give notice of conduct to be avoided."

The universally avowed purpose of vagrancy statutes ostensibly is to segregate the members of society into two basic groups, i.e., the good members and the objectionable members, with a view to preventing crimes which are likely to flow from a vagrant's mode of life.

"The purpose of vagrancy statutes is to subject persons, whose habits of life are such as to make them objectionable members of society, to police regulation promotive of the safety or good order of the community in which they are found, and to prevent them from becoming charges on the public *but not to punish them for the doing of specific overt acts.* In other words, the purpose of vagrancy statutes is to prevent crimes which may likely flow from a vagrant's mode of life by cutting out at the roots breeding places of many crimes offensive to the personal well-being of many citizens, which endanger private property and threaten the peace. Such preventive purpose wholly fails if a law-enforcement officer must wait until a crime is committed • • •" 91 CJS 778, *Vagrancy,* Section 1.

Louisiana subscribes to such a broad concept of penal legislation. *State* v. *McCormack* (1917), 142 La. 580, 77 So.

288. Such an authoritative interpretation puts the words of the interpretation in the statute as definitely as if they had been so amended by the legislature. *Hebert* v. *Louisiana* (1926), 272 U.S. 312, 47 S. Ct. 103, 71 L. Ed. 270; *Skiriotes* v. *Florida* (1941), 313 U.S. 69, 61 S. Ct. 924, 85 L. Ed. 1193; *Winters* v. *New York* (1948), 333 U.S. 507, 514, 68 S. Ct. 665, 92 L. Ed. 840; *Kingsley Pictures Corp.* v. *Regent* (1959), 360 U.S. 684, 79 S. Ct. 1362, 3 L. Ed. 1512; *Albertson* v. *Millard* (1953), 345 U.S. 242, 73 S. Ct. 600, 97 L. Ed. 983; *U. S.* v. *Burnison* (1950), 339 U.S. 87, 70 S. Ct. 503; *Aero Transit Co.* v. *Commissioners* (1947), 332 U.S. 495, 68 S. Ct. 167, 92 L. Ed. 99.

Within such a context does the vagrancy statute at bar conform to the safeguarding standards of the equal protection clause of the Constitution?

At the outset it must be reminded that in Louisiana there are no common law crimes. And as already pointed out no act or conduct is a crime unless it is defined and made a crime clearly and unmistakably by statute. A reference to the Louisiana Criminal Code (L.S.A.—R.S. 14:7) indicates that only a defined act or conduct is intended to be made criminally punishable.

> "A crime is that *Conduct* which is defined as criminal in this code, or in other acts of the Legislature, or in the Constitution of this State." (R.S. 14:7)

Contrary to such legislative postulate, R.S. 14:107 defines as a crime the *status* of being in or near any structure or private grounds without being able to account for one's lawful presence therein. Thus, it appears in the very conception of this statutory crime that a difference is made between it and other criminal offenses.

Furthermore, the very nature of this statutory offense effects an even greater and far more significant difference

than the one just noted. Inasmuch as under the terms of this defined offense the failure of one to account for his lawful presence is *part* of the offense, one therefore wishing to avoid arrest and/or conviction must affirmatively speak up when apprehended or tried. He must, in effect, testify for—and if what he says does not convince or satisfy the arresting officer or the Court, then against—himself. He cannot remain mute, because obviously refusing to "account" for his lawful presence leaves unrefuted that part of the offense "without being able to account for his lawful presence" as would be the situation if his "accounting" proved unsatisfactory. The unusual result is that, unlike other citizens accused of crime in Louisiana, one accused of vagrancy on the count at bar cannot enjoy the presumption of innocence common to all accused of crime while simultaneously relying on the privilege of the Fifth Amendment, because his very silence supplies proof of his guilt, i.e., his failure to account for his lawful presence. In such a situation, to state it otherwise, the State has the burden merely to prove the accused's presence in a given locale. The burden then shifts to the accused to prove the innocence or validity of his presence. He is thus compelled by statute to prove his innocence. This anomalous situation obtains even though the Louisiana Supreme Court heretofore has held that it is error to compel an accused to prove his innocence. *State* v. *Rock* (1926), 162 La. 299, 110 So. 482.

There is no parallel to such a situation in Louisiana. Every person accused of crime is presumed to be innocent, L.S.A.-R.S. 15:387, and this presumption abides with the accused throughout his trial and prevails unless and until the State produces credible evidence sufficient to overcome this presumption. *State* v. *Rock*, supra. Furthermore, no person may be compelled to take the witness stand in his

own defense, Louisiana Constitution, Article 1, Section 11,[9] and even comment by the prosecution concerning the failure of the accused to take the witness stand constitutes reversible error. *State* v. *Stahl* (1959), 236 La. 362, 107 So. 2d 670; *State* v. *Bentley* (1951), 219 La. 893, 54 So. 2d 137; *State* v. *Antoine* (1938), 189 La. 619, 180 So. 465; *State* v. *Richardson* (1932), 175 La. 823, 144 So. 587; *State* v. *Sinigal* (1915), 138 La. 469, 70 So. 478. Under the vagrancy statute in question, however, these rights and privileges are denied one accused of its violation. Such an accused therefore does not stand on an equal footing with other citizens accused of crimes.

There is another aspect of this vagrancy statute which arrests attention. It appears quite convincingly that the statute effects an unreasonable classification, both as among those included in the catchall definitions of vagrancy and as between those included in these definitions and those not included therein. There appears to be no reasonable basis whatever, for example, to classify as a vagrant one who is found near or in any structure or private grounds without being able to account for his lawful presence with one engaged as a prostitute. To say the least, it is difficult to conceive how the morals or well-being of the general public could be similarly affected by one standing near a structure without an assignable reason as they could and are affected by the activities of a prostitute.

Additionally, unlike those not coming within the classification, by the very terms of the statute, petitioner and

[9] "No person shall be compelled to give evidence against himself in a criminal case or in any proceeding that may subject him to criminal prosecution, except as otherwise provided in this Constitution. No person under arrest shall be subjected to any treatment designed by effect on body or mind to compel confession of crime; nor shall any confession be used against any person accused of crime unless freely and voluntarily made."

those included in the definitions of vagrants are not charged with crime and prosecuted because of any offensive and defined *conduct*. They are subject to criminal prosecution simply because of a mode of life. The apparent theory justifying such legislation is that persons engaging in such a mode of existence or occupying such a defined status are potential criminals and their status breeds criminal conduct. As stated in C.J.S., supra:

> "In other words, the purpose of vagrancy statutes is to prevent crimes which may likely flow from a vagrant's mode of life by cutting out at the roots breeding places of many crimes offensive to the personal well-being of many citizens which endanger private property and threaten the peace."

While such a theory of criminal justice is not novel,[10] it is a legal anachronism repugnant to the concept of ordered liberty in our society. The very nature of such a theory fosters limitless opportunities for police abuses administered under the guise of police regulation. It constitutes a sort of carte blanche authority empowering enforcement officers to detain and arrest without warrant or probable cause, where otherwise, absent such a vagrancy statute, the same police action would offend against the guaranties of the Constitution. *Henry* v. *United States* (1959), 361 U.S. 98, 80 S.Ct. 168; *Wolf* v. *Colorado* (1949), 338 U.S. 25, 69 S.Ct. 1359. In fact, in *State* v. *Solomon* (1952), 222 La. 269, 62 So. 2d 481, where the accused was convicted of murder, the Louisiana Supreme Court relied

---

[10] In 37 New York University Law Review, Number 1, pp. 102-136, in an interesting article entitled: *The Vagrancy Concept Reconsidered: Problems and Abuses in Statute Criminology*, the authors trace the historical origin of vagrancy statutes to more than five centuries ago.

upon the vagrancy statute in holding that his arrest was legal, though accomplished without the warrant required by law, inasmuch as the accused had been booked for the crime of vagrancy after his arrest. Said the Louisiana Court, at p. 485:

> "The cases of *McNabb* v. *United States*, 318 U.S. 332, 63 S.Ct. 608, 87 L.Ed. 819, and *Upshaw* v. *United States*, 335 U.S. 410, 69 S.Ct. 170, 172, 93 L.Ed. 10, relied on by counsel are not apposite here. The principle upon which those decisions are pitched does not control prosecutions under the laws of this State. *Additionally appellant was not illegally detained in the case at bar, having been charged with vagrancy in violation of L.S.A.-R.S. 14:107.*"

Such a statute furthermore empowers law enforcement officers to be selective in the enforcement of its terms. There is nothing to restrict police officers from discriminating against any particular group, ethnic, political, or racial, in administering the terms of vagrancy statutes. Furthermore, proliferation of such police abuse is as limitless as the vagaries of human imagination.

There exists no credible evidence reasonably demonstrative of the conclusion that there is any causal relationship based upon experience anent vagrancy statutes of the type under consideration, between the object of punishment and the harm from which society seeks protection, i.e., the legislative purpose. None of the authorities who have devoted their attention to this question has been able to discover evidence supporting the theoretical basis of vagrancy statutes.[11] In other words, there exists no convincing evidence that persons classified as vagrants are more prone

---

[11] Ibid.

to commit crimes than others or that the status which they occupy breeds more crimes than the mode of existence of persons not included in the classification. The net result is that the theory can be sustained only if its major premise, i.e., all vagrants are potential criminals, is presumed. Such a presumption, however, is impermissible where the matter at stake is the liberty of the individual.

> "Although the Court has not assumed to define liberty with any great precision, that term is not confined to mere freedom from bodily restraint. *Liberty under law extends to the full range of conduct which the individual is free to pursue and it cannot be restricted except for a proper governmental objective.*" *Bolling* v. *Sharpe* (1954), 347 U.S. 497, 74 S.Ct. 693, 98 L.Ed. 884.

Discrimination of an unusual character especially suggests careful consideration to determine whether they are obnoxious to the Constitutional provision. *Louisville Gas and Electric Co.* v. *Coleman* (1928), 277 U.S. 32, 48 S.Ct. 423, 72 L.Ed. 770; *Hartford Steam Boiler Inspection and Insurance Co.* v. *Harrison* (1937), 301 U.S. 459, 57 S.Ct. 838, 81 L.Ed. 1223. Furthermore, as the Court appropriately observed in *Morey* v. *Doud* (1957), 354 U.S. 457, 77 S.Ct. 1344, 1350:

> "A statutory discrimination must be based on differences that are reasonably related to the purpose of the act in which it is found."

As has been suggested, there is no discoverable evidence justifying the making of differences between petitioner, who was charged as a vagrant, and those similarly situated, as opposed to other citizens who are amenable to prosecution only for defined acts or conduct. Petitioner

and those falling within the classification of vagrants nevertheless are singled out for different treatment not based on some reasonable criteria justifying the difference. Such legislation offends against the guaranties of the Constitution.

> "When the existence of a distinct class is demonstrated, and it is further shown that the laws, as written or as applied, single out that class for different treatment not based on some reasonable classification, the guaranties of the Constitution have been violated." *Hernandez* v. *State of Texas* (1954), 347 U.S. 475, 74 S.Ct. 667, 670, 98 L.Ed. 866.

State Has Forfeited Right to Prosecute Petitioner

Practically all of petitioner's civil rights have been violated by the enforcement officials involved in his arrest and imprisonment and sanctioned by the judicial officers to whom application for habeas corpus and writs was made.[12] In the first place petitioner was arrested without a warrant contrary to Louisiana law, R.S. 15:60, and only because his former employer instructed the Deputy Sheriffs to arrest him for trespassing (Ex. A, Tr. p. 17). He was immediately thereafter put in jail where he remained without being brought before a committing magistrate as required by law.

In Louisiana a warrant is a written order issued by a Judge to a peace officer, directing said officer to arrest a named individual and to bring him before the Judge issuing the warrant. To arrest with a warrant, the officer must have the warrant in his immediate possession, he

---

[12] All pertinent statutes involved are set out verbatim in the index to this brief.

must inform the person being arrested of the warrant and of the basis for the arrest, and he must make written return on the warrant. Likewise, a person may be arrested by an officer having authoritative information that another officer holds such a warrant or when the misdemeanor is committed in the immediate presence of the arresting officer, who then and there makes the arrest. No person may be legally arrested for a misdemeanor under any other circumstances. Following an arrest, Louisiana law requires that the prisoner be taken immediately to the nearest jail or police station and booked. He must be permitted to use the telephone or send a messenger to an attorney or surety, or to family or friends for the purpose of obtaining counsel and a surety. This was denied to petitioner (Ex. A, Tr. pp. 17-20). He is entitled to be admitted to bail from the time of his arrest and he may not be placed in solitary confinement. If the arrest has been made in response to a warrant, the p[illegible]ner must be taken without delay before the magistrate designated in said warrant. If the arrest has been made without a warrant, the prisoner must be taken without delay before a committing magistrate. This too was denied to petitioner and on the contrary he was held incommunicado for almost two months (Ex. A, Tr. pp. 17-20). When a prisoner has been brought before such magistrate, he must be ordered released unless an affidavit be then made, charging him with a criminal offense. If such affidavit be made—and one was made the day following petitioner's incarceration (Ex. B, Tr. p. 21)—the magistrate has the mandatory duty of ordering a preliminary examination to be held at a designated time, in order that it may be determined by the judicial arm of the government whether the prisoner should be deprived of his liberty. Both the State and the accused have a right at any time to petition for preliminary

examination, and if at that time the prosecution is proceeding on the basis of an indictment filed or a bill of information filed, the granting of preliminary examination is entirely within the discretion of the Court, but if the petitioner is being held merely on an affidavit, the Court has no discretion but must order the preliminary examination. L.S.A.-R.S. 15:154.[13] Petitioner filed his application for preliminary examination at a time before any bill of information had been filed against him and while he was being held on the authority of an affidavit, notwithstanding which, the trial judge, though being under the mandatory duty to grant such a hearing, summarily denied petitioner's application when the District Attorney filed a bill of information against petitioner on the hearing date of the preliminary examination. The denial by these State officials of petitioner's legal rights constitutes a denial of equal protection of State laws. And, under the doctrine of *McNabb* v. *United States,* 318 U.S. 332, 63 S.Ct. 608, 87 L.Ed. 819, and *Upshaw* v. *United States,* 335 U.S. 410, 69 S.Ct. 170, 93 L.Ed. 10, seemingly the entire proceedings against petitioner are an absolute nullity and thereby the State has forfeited its right to prosecute petitioner.

[13] "Either the State or the defendant shall have the right to demand a preliminary examination; provided that after an indictment found or an information filed, it shall be wholly within the discretion of the district court, and not subject to review by any other court, to order or to refuse to order a preliminary examination; nor shall such examination be held in any case in which the offense charged is within the trial jurisdiction of any city or municipal court."

Conclusion

Petitioner therefore respectfully requests that Louisiana Revised Statute, Title 14, Section 107, as amended by Act 454, Section 1 of 1952, be declared null and void as offending against the guaranties of the Constitution of the United States, and the arrest and attempted prosecution of petitioner be annulled and set aside and all official entries and/or judgments entered against petitioner in pursuance of the prosecution of petitioner under such statute be ordered cancelled and erased from the public records of any Louisiana court of competent jurisdiction.

Respectfully submitted,

SIMON & TRICE
Attorneys at Law
1408 Pinhook Road
Post Office Box 2241
Lafayette, Louisiana

By /s/ J. MINOS SIMON
J. Minos Simon